

IC 28-14-3

Chapter 3. Powers and Duties

IC 28-14-3-1

Scope of chapter

Sec. 1. Subject to the limitations and restrictions set forth in this article and in the articles of incorporation, a corporate fiduciary possesses and may exercise the rights, privileges, and powers provided in this chapter.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-2

Corporate name

Sec. 2. A corporate fiduciary is entitled to perpetual duration and succession of its corporate name.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-3

Articles of incorporation

Sec. 3. The articles of incorporation of a corporate fiduciary must, without limitation, grant the corporate fiduciary the powers described in sections 4 through 8 of this chapter and authorize the corporate fiduciary to do the following:

- (1) Sue and be sued in its corporate name.
- (2) Have a corporate seal.
- (3) Make and amend bylaws that are not inconsistent with the articles of incorporation or Indiana law.
- (4) Purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in real or personal property.
- (5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of the corporate fiduciary's property.
- (6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with the:
 - (A) shares or other interests in; and
 - (B) obligations of;any entity, including the corporate fiduciary, except as otherwise prohibited by this article.
- (7) Borrow money, make contracts and guarantees, incur liabilities, and issue notes, bonds, and other obligations that may be convertible into or include the option to purchase other securities of the corporate fiduciary.
- (8) Mortgage or pledge any of its assets.
- (9) Purchase for its own account and sell investment securities under such limitations as the department prescribes by rule or policy.
- (10) Conduct business, locate offices, and exercise the powers

granted by this article regardless of geographic limitations.

(11) Elect directors, elect and appoint officers, and appoint employees and agents of the corporate fiduciary.

(12) Define the duties of directors, officers, and employees of the corporate fiduciary.

(13) Fix the compensation of directors, officers, and employees of the corporate fiduciary.

(14) Pay or pay for the following:

(A) Deferred compensation.

(B) Employment contracts.

(C) Individual or group life insurance.

(D) Insurance on the life or lives of designated officers.

(15) Make donations for the public welfare or for charitable, scientific, or educational purposes.

(16) Become a member of the Federal Reserve system.

(17) With the approval of the department, convert into a bank.

(18) Cease doing business and dissolve under IC 28-1-9.

(19) Exercise all powers that are incidental to and proper or that may be necessary and usual in carrying on a corporate fiduciary business.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-4

Loans

Sec. 4. (a) A corporate fiduciary may:

(1) lend money; and

(2) receive and hold real and personal property as security for the repayment of loans;

only as authorized in this section.

(b) A corporate fiduciary may make a loan to a fiduciary account it administers and may take security for the loan, unless the governing document prohibits borrowing money and pledging account assets. The terms of a loan described in this subsection must be comparable to the terms available from other lenders.

(c) A corporate fiduciary may make a loan to a director, an officer, or an employee of the corporate fiduciary. A loan made under this subsection must be adequately secured. Loans made under this subsection by a corporate fiduciary may not:

(1) total more than ten thousand dollars (\$10,000) for each individual; or

(2) exceed five percent (5%) of total equity capital when all loans to directors, officers, and employees are aggregated.

(d) Loans made to directors, officers, and employees under subsection (c) must be made exclusively from corporate funds. Funds from a fiduciary account may not be used to make or secure a loan under subsection (c).

As added by P.L.262-1995, SEC.90.

IC 28-14-3-5

Securities held by clearing corporation

Sec. 5. (a) Notwithstanding any other law, a corporate fiduciary holding securities in a fiduciary capacity is authorized to deposit or arrange for the deposit of the securities in a clearing corporation.

(b) When securities are deposited in a clearing corporation under subsection (a), certificates representing securities of the same class of the same issuer may be merged and held in the name of the nominee of the clearing corporation. The records of the corporate fiduciary acting as custodian, managing agent, or custodian for a fiduciary must at all times show the name of the party for whose account the securities are deposited.

(c) Title to the securities held by the clearing corporation under this section may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-6

United States government securities

Sec. 6. (a) Notwithstanding any other law, a corporate fiduciary holding United States government securities in a fiduciary capacity may use the Federal Reserve Book-Entry procedure for United States government securities. The records of the corporate fiduciary must at all times show the name of the party for whose account the United States government securities are deposited.

(b) Title to the United States government securities registered by Federal Reserve Book-Entry under subsection (a) may be transferred by bookkeeping entry on the books of the Federal Reserve without physical delivery of certificates representing the securities.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-7

Benefits; incentives; stock purchase programs

Sec. 7. (a) A corporate fiduciary may do the following:

(1) Pay benefits, offer incentives, and establish benefit plans and incentive plans for an existing or a former director, officer, employee, and agent of the corporate fiduciary.

(2) Adopt stock purchase programs for employees and:

(A) grant options to purchase;

(B) issue; and

(C) sell;

shares of the capital stock of the corporate fiduciary to the employees of the corporate fiduciary or to a trustee on behalf of the employees of the corporate fiduciary.

(b) A corporate fiduciary may act as the trustee to whom shares of the capital stock of the corporate fiduciary are issued and sold on behalf of the employees of the corporate fiduciary under subsection (a)(2).

(c) A corporate fiduciary granting options and issuing capital stock in connection with a stock purchase plan for its employees under subsection (a)(2) is not required to first offer the capital stock

to the shareholders of the corporate fiduciary.

(d) A corporate fiduciary granting options and issuing capital stock in connection with a stock purchase plan for its employees under subsection (a)(2) may offer the capital stock to the shareholders for such consideration (but not less than par value), and upon such terms and conditions, as are approved by the:

- (1) board of directors of the corporate fiduciary;
- (2) holders of a majority of the shares of the corporate fiduciary who are entitled to vote with respect to the issuance of the capital stock; and
- (3) director.

(e) In the absence of actual fraud in the transaction, the judgment of the board of directors of a corporate fiduciary as to the sufficiency of the consideration for the issuance of options in connection with a stock purchase plan under subsection (a)(2) is conclusive.

(f) A corporate fiduciary exercising the powers granted in this section may, to the extent approved by the director, have authorized and unissued stock that is required to fulfill a stock option arrangement or another arrangement authorized by this section.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-8

Subsidiaries

Sec. 8. (a) A corporate fiduciary may:

- (1) exercise any power through a subsidiary; and
- (2) purchase, own, and hold shares of stock of a subsidiary.

(b) A subsidiary of a corporate fiduciary may not:

- (1) exercise a power that the corporate fiduciary could not exercise; or
- (2) engage in an activity in which the corporate fiduciary would not be permitted to engage.

(c) A corporate fiduciary may acquire or establish a subsidiary by submitting an application to the department containing a complete description of the corporate fiduciary's investment in the subsidiary and the activity to be conducted.

(d) The department shall review a corporate fiduciary's application to acquire or establish a subsidiary to determine:

- (1) whether the proposed activities are legally permissible; and
- (2) whether the proposal endangers the safety and soundness of the corporate fiduciary.

The director shall either approve or disapprove the application within sixty (60) days after the date on which the department receives the application. The period for approval or disapproval may be extended by the department based on a determination that additional information from the corporate fiduciary or additional time for analysis is required.

(e) Each subsidiary of a corporate fiduciary is subject to examination by the department to the same extent as though the subsidiary were included within the legal entity of the corporate fiduciary.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.12.

IC 28-14-3-9

Investment and reinvestment of assets

Sec. 9. (a) Notwithstanding any other law, a corporate fiduciary, in exercising investment discretion in its fiduciary capacity with respect to the investment and reinvestment of assets, may invest and reinvest the assets, subject to the standard set forth in IC 30-4-3-3(c), in the securities of any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(b) If a corporate fiduciary invests or reinvests assets under subsection (a), the fact that the corporate fiduciary or any affiliate of the corporate fiduciary is:

(1) providing services to the investment company or trust as investment adviser, sponsor, distributor, custodian, transfer agent, registrar, or otherwise; and

(2) receiving reasonable remuneration for the services provided; does not preclude the corporate fiduciary from investing in the securities of the investment company or trust.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-10

Acting as fiscal or transfer agent

Sec. 10. A corporate fiduciary has the power to act as fiscal or transfer agent of the United States or any state, municipality, body politic, or corporation, and may, in that capacity:

(1) receive and disburse money;

(2) transfer, register, and countersign certificates of stocks, bonds, and other evidence of indebtedness;

(3) authenticate and certify bonds and certificates of indebtedness referred to in subdivision (2);

(4) act as agent to buy and sell domestic and foreign transportation;

(5) solicit and write insurance as insurance producer or broker for any insurance company authorized to do business in Indiana; and

(6) act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.13; P.L.178-2003, SEC.94.

IC 28-14-3-11

Acting as insurance producer for sale of annuity contract or life insurance policy

Sec. 11. (a) Notwithstanding any other provision of this title, a corporate fiduciary may act as an insurance producer for the sale of any annuity contract or any life insurance policy issued by a life insurance company (as defined in IC 27-1-2-3) authorized to do

business in Indiana under IC 27-1.

(b) A corporate fiduciary that acts as an agent for the sale of an annuity contract or a life insurance policy:

(1) is subject to all requirements of IC 27 relating to the sale and solicitation of insurance, including licensing as an insurance producer under IC 27-1-15.6; and

(2) must comply with the disclosure requirements under IC 27-1-38.

As added by P.L.262-1995, SEC.90. Amended by P.L.215-1999, SEC.14; P.L.132-2001, SEC.21; P.L.130-2002, SEC.9; P.L.178-2003, SEC.95.

IC 28-14-3-12

Appointment as commissioner for sale of real estate; guardian of minor or incapacitated persons; trustee, receiver, conservator, or committee of property or estate in insolvency or bankruptcy proceedings; depository of funds paid into court; other fiduciary capacities

Sec. 12. A corporate fiduciary may be appointed and act under the order of appointment of a court of competent jurisdiction as commissioner for the sale of real estate, guardian of the person and guardian of the estate of a person less than eighteen (18) years of age, and incapacitated persons (as defined in IC 29-3-1-7.5), or as trustee, receiver, conservator, or committee of the property or estate of a person, corporation, or company in insolvency or bankruptcy proceedings, or as depository of money paid into court, whether for the benefit of a person, regardless of age, corporation, or party, and in any other fiduciary capacity.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-13

Appointment as executor, testamentary trustee, or administrator; corporate successor to will nominee; co-fiduciary with natural person; bond or security

Sec. 13. (a) A corporate fiduciary may:

(1) be appointed; and

(2) accept the appointment;

to act as executor or trustee under the last will and testament, or as administrator, with or without the will annexed, of the estate of any deceased person.

(b) A corporate fiduciary may:

(1) be appointed; and

(2) act under the order of appointment of any court of competent jurisdiction;

as executor of or trustee under any last will and testament, whenever the corporate fiduciary is the successor to any corporation appointed in the last will and testament, whether such succession is the result of merger, consolidation, or otherwise.

(c) Whenever a natural person is appointed with a corporate fiduciary in an appointment as receiver, guardian, commissioner,

trustee, executor, or administrator with or without the will annexed, the appointment of the natural person may be:

- (1) under such limitation of powers; and
- (2) upon such terms and conditions as to:
 - (A) the possession and control of the trust assets by the corporate fiduciary, or otherwise; and
 - (B) the bond or security, if any, to be given by the natural person;

as the natural person and the corporate fiduciary may agree to and the court making the appointment shall approve.

(d) Whenever a natural person who is appointed in a fiduciary capacity is required to give a bond or security for the faithful performance of the natural person's duties, a corporate fiduciary may guarantee or become surety for the natural person:

- (1) if the corporate fiduciary takes possession and control of the assets belonging to the estate or other fiduciary relationship; and
- (2) if the court having jurisdiction of the corporate fiduciary approves the guaranteeing or becoming surety for the natural person.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-14

Appointment upon application or consent of person acting or entitled to serve as guardian, trustee, executor, or administrator

Sec. 14. (a) A corporate fiduciary may be appointed and may act under the order of appointment of any court of competent jurisdiction as:

- (1) guardian;
- (2) trustee;
- (3) executor; or
- (4) administrator, with or without the will annexed;

on the application or consent of a person who is acting as guardian, trustee, executor, or administrator, or who is entitled to appointment as guardian, trustee, executor, or administrator.

(b) A corporate fiduciary appointed under subsection (a) serves in the place of and instead of the person who applies for or consents to the appointment.

(c) An appointment under subsection (a) must be made:

- (1) upon the notice required by law to the persons interested in the estate or fund; and
- (2) on the consent of the principal beneficiaries or other persons interested in the estate or fund as the court making the appointment considers proper.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-15

Trusts

Sec. 15. A corporate fiduciary has the power to:

- (1) take, accept, and execute any and all legal trusts, duties, and

powers in regard to the holding, management, sale, and disposition of any property or estate, real or personal, wherever located, and the rents and profits of the property or estate, which may be granted or confided to it by any court of competent jurisdiction, or by any person, corporation, municipality, or other authority;

(2) take, accept, and execute any and all trusts and powers of any nature or description that:

(A) may be conferred upon or entrusted or submitted to it by any person, firm, company, or any body politic, corporation, foreign or domestic, or other authority, by grant, assignment, transfer, devise, bequest, or otherwise; or

(B) may be entrusted, committed, or transferred to it or vested in it by order of a court of competent jurisdiction; and

(3) generally execute trusts of every description not inconsistent with the laws of Indiana or the United States.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-16

Power to act in fiduciary capacity; acting as commissioner for sale of real estate without bond or security; administration of oaths

Sec. 16. (a) Except as otherwise provided in this chapter, a corporate fiduciary has the power:

(1) to act:

(A) in every fiduciary capacity permitted by this article; and

(B) as commissioner for the sale of real estate, without bond or other security; and

(2) to administer oaths attested by the signature of its secretary or cashier and its seal whenever it is acting in a fiduciary capacity and whenever an individual acting in the same capacity is authorized by law to administer oaths.

(b) The court having jurisdiction of a corporate fiduciary may at any time, before or after the corporate fiduciary accepts a fiduciary appointment require the corporate fiduciary to give a bond or other security. If the corporate fiduciary fails to give a bond or security as required, the court may remove the corporate fiduciary and revoke the appointment.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-17

Pledge or deposit of assets prohibited

Sec. 17. A corporate fiduciary shall not pledge or deposit any of its assets as a condition to the exercise of its powers as a fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-18

Receipt of property upon deposit for safekeeping or in escrow

Sec. 18. (a) A corporate fiduciary has the power to:

(1) receive, upon terms and conditions prescribed by the corporate fiduciary not inconsistent with the provisions of this

section, upon deposit for safekeeping, or in escrow:

- (A) money;
- (B) bonds;
- (C) mortgages;
- (D) jewelry;
- (E) plate;
- (F) stock;
- (G) securities and valuable papers of any kind; and
- (H) other personal property; and

(2) rent or lease receptacles for the safe deposit of personal property.

(b) Neither a corporate fiduciary nor any of the assets of the corporate fiduciary are liable for:

- (1) the value of property received by the corporate fiduciary under this section; or
- (2) damages for the loss, theft, or misappropriation of the property.

(c) A corporate fiduciary may procure and carry a policy or policies of insurance for the benefit of the owners of property received by the corporate fiduciary under this section.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-19

Compensation for fiduciary services; counsel fees

Sec. 19. (a) A corporate fiduciary has the power to demand and receive, for the faithful performance and discharge of services performed under the powers vested in the corporate fiduciary by this article:

- (1) reasonable compensation, or compensation as fixed by agreement of the parties;
- (2) all advances necessarily paid out and expended in the discharge and performance of its duties; and
- (3) unless otherwise agreed upon, interest at the legal rate on the advances referred to in subdivision (2).

(b) The advances referred to in subsection (a) may include the compensation paid for the employment of legal services when necessary for the protection of a trust or other fiduciary relation.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-20

Compensation or commission for loan negotiation or trust execution not considered interest or usury

Sec. 20. The compensation or commission paid or agreed to be paid for the negotiation of any loan or the execution of any trust by a corporate fiduciary is not interest within the meaning of any law of Indiana, and the excess of the compensation or commission over any rate of interest permitted by the laws of Indiana shall not be decreed or held to be usury in any court.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-21**Appointment by court having jurisdiction; power to renounce appointment**

Sec. 21. (a) A court or an officer of a court having jurisdiction to:

- (1) grant letters of guardianship;
- (2) appoint a trustee, guardian, receiver, or committee of the estate of a person;
- (3) appoint a committee, trustee, or receiver in insolvency or bankruptcy proceedings, or in any other proceeding or action, under state or federal law; or
- (4) make any other fiduciary appointment provided for in this article;

may appoint a corporate fiduciary. However, the corporate fiduciary is not required to accept the appointment.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-22**Establishment of business or agency within state by nonresident corporate fiduciary, trust company, or bank**

Sec. 22. Subject to IC 28-1-22, a corporate fiduciary, trust company, or bank that is organized and doing business under the laws of any state, territory, or district other than Indiana, including a national bank or national trust company that is primarily domiciled in any other state, may establish an office to conduct business as a fiduciary in Indiana if the law of the state, territory, or district in which the corporate fiduciary, trust company, or bank is primarily domiciled would allow an Indiana bank, an Indiana corporate fiduciary, or an Indiana trust company to establish a place of business or an agency in that state, territory, or district for the conduct of business as a fiduciary.

As added by P.L.262-1995, SEC.90. Amended by P.L.192-1997, SEC.29.

IC 28-14-3-23**Service as successor trustee**

Sec. 23. For the purposes of IC 30-4-3-29, a corporate fiduciary may serve as a successor trustee in the same capacity as if the corporate fiduciary were a bank (as defined in IC 28-1-1-3).

As added by P.L.262-1995, SEC.90.

IC 28-14-3-24**Credit union service organizations**

Sec. 24. Notwithstanding any other law, a credit union or a group of credit unions may establish a credit union service organization that is a corporate fiduciary.

As added by P.L.262-1995, SEC.90.

IC 28-14-3-25**Powers relating to common trust funds**

Sec. 25. For the purposes of IC 30-1-8, a corporate fiduciary has

the same powers and authority as a bank.
As added by P.L.262-1995, SEC.90.